The LAWPHiL Project
ARELLANO LAW FOVNDATION
PHILIPPINE LAWS AND JURISPRUDENCE DATABANK

Today is Monday, January 09, 2017

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-15645 January 31, 1964

PAZ P. ARRIETA and VITALIADO ARRIETA, plaintiffs-appellees,
vs.
NATIONAL RICE AND CORN CORPORATION, defendant-appellant,
MANILA UNDERWRITERS INSURANCE CO., INC., defendant-appellee.

Teehankee and Carreon for plaintiffs-appellees.
The Government Corporate Counsel for defendant-appellant.
Isidro A. Vera for defendant-appellee.

REGALA, *J.:*

This is an appeal of the defendant-appellant NARIC from the decision of the trial court dated February 20, 1958, awarding to the plaintiffs-appellees the amount of $286,000.00 as damages for breach of contract and dismissing the counterclaim and third party complaint of the defendant-appellant NARIC.

In accordance with Section 13 of Republic Act No. 3452, "the National Rice and Corn Administration (NARIC) is hereby abolished and all its assets, liabilities, functions, powers which are not inconsistent with the provisions of this Act, and all personnel are transferred "to the Rice and Corn Administration (RCA).

All references, therefore, to the NARIC in this decision must accordingly be adjusted and read as RCA pursuant to the aforementioned law.

On May 19, 1952, plaintiff-appellee participated in the public bidding called by the NARIC for the supply of 20,000 metric tons of Burmese rice. As her bid of $203.00 per metric ton was the lowest, she was awarded the contract for the same. Accordingly, on July 1, 1952, plaintiff-appellee Paz P. Arrieta and the appellant corporation entered into a Contract of Sale of Rice, under the terms of which the former obligated herself to deliver to the latter 20,000 metric tons of Burmess Rice at $203.00 per metric ton, CIF Manila. In turn, the defendant corporation committed itself to pay for the imported rice "by means of an irrevocable, confirmed and assignable letter of credit in U.S. currency in favor of the plaintiff-appellee and/or supplier in Burma, immediately." Despite the commitment to pay immediately "by means of an irrevocable, confirmed and assignable Letter of Credit," however, it was only on July 30, 1952, or a full month from the execution of the contract, that the defendant corporation, thru its general manager, took the first to open a letter of credit by forwarding to the Philippine National Bank its Application for Commercial Letter Credit. The application was accompanied by a transmittal letter, the relevant paragraphs of which read:

> In view of the fact that we do not have sufficient deposit with your institution with which to cover the amount required to be deposited as a condition for the opening of letters of credit, we will appreciate it if this application could be considered special case.
>
> We understand that our supplier, Mrs. Paz P. Arrieta, has a deadline to meet which is August 4, 1952, and in order to comply therewith, it is imperative that the L/C be opened prior to that date. We would therefore request your full cooperation on this matter.

On the same day, July 30, 1952, Mrs. Paz P. Arrieta thru counsel, advised the appellant corporation of the extreme necessity for the immediate opening of the letter credit since she had by then made a tender to her supplier in Rangoon, Burma, "equivalent to 5% of the F.O.B. price of 20,000 tons at $180.70 and in compliance with the regulations in Rangoon this 5% will be confiscated if the required letter of credit is not received by them before August 4, 1952."

On August 4, 1952, the Philippine National Bank informed the appellant corporation that its application, "for a letter of credit for $3,614,000.00 in favor of Thiri Setkya has been approved by the Board of Directors with the

condition that marginal cash deposit be paid and that drafts are to be paid upon presentment." (Exh. J-pl.; Exh. 10-def., p. 19, Folder of Exhibits). Furthermore, the Bank represented that it "will hold your application in abeyance pending compliance with the above stated requirement."

As it turned out, however, the appellant corporation not in any financial position to meet the condition. As matter of fact, in a letter dated August 2, 1952, the NARIC bluntly confessed to the appellee its dilemma: "In this connection, please be advised that our application for opening of the letter of credit has been presented to the bank since July 30th but the latter requires that we first deposit 50% of the value of the letter amounting to aproximately $3,614,000.00 *which we are not in a position to meet*." (Emphasis supplied. Exh. 9-Def.; Exh. 1-Pe., p. 18, Folder of Exhibits)

Consequently, the credit instrument applied for was opened only on September 8, 1952 "in favor of Thiri Setkya, Rangoon, Burma, and/or assignee for $3,614,000.00," (which is more than two months from the execution of the contract) the party named by the appellee as beneficiary of the letter of credit.

As a result of the delay, the allocation of appellee's supplier in Rangoon was cancelled and the 5% deposit, amounting to 524,000 kyats or approximately P200,000.00 was forfeited. In this connection, it must be made of record that although the Burmese authorities had set August 4, 1952, as the deadline for the remittance of the required letter of credit, the cancellation of the allocation and the confiscation of the 5% deposit were not effected until August 20, 1952, or, a full half month after the expiration of the deadline. And yet, even with the 15-day grace, appellant corporation was unable to make good its commitment to open the disputed letter of credit.

The appellee endeavored, but failed, to restore the cancelled Burmese rice allocation. When the futility of reinstating the same became apparent, she offered to substitute Thailand rice instead to the defendant NARIC, communicating at the same time that the offer was "a solution which should be beneficial to the NARIC and to us at the same time." (Exh. X-Pe., Exh. 25—Def., p. 38, Folder of Exhibits). This offer for substitution, however, was rejected by the appellant in a resolution dated November 15, 1952.

On the foregoing, the appellee sent a letter to the appellant, demanding compensation for the damages caused her in the sum of $286,000.00, U.S. currency, representing unrealized profit. The demand having been rejected she instituted this case now on appeal.

At the instance of the NARIC, a counterclaim was filed and the Manila Underwriters Insurance Company was brought to the suit as a third party defendant to hold it liable on the performance bond it executed in favor of the plaintiff-appellee.

We find for the appellee.

It is clear upon the records that the sole and principal reason for the cancellation of the allocation contracted by the appellee herein in Rangoon, Burma, was the failure of the letter of credit to be opened with the contemplated period. This failure must, therefore, be taken as the immediate cause for the consequent damage which resulted. As it is then, the disposition of this case depends on a determination of who was responsible for such failure. Stated differently, the issue is whether appellant's failure to open immediately the letter of credit in dispute amounted to a breach of the contract of July 1, 1952 for which it may be held liable in damages.

Appellant corporation disclaims responsibility for the delay in the opening of the letter of credit. On the contrary, it insists that the fault lies with the appellee. Appellant contends that the disputed negotiable instrument was not promptly secured because the appellee , failed to seasonably furnish data necessary and required for opening the same, namely, "(1) the amount of the letter of credit, (2) the person, company or corporation in whose favor it is to be opened, and (3) the place and bank where it may be negotiated." Appellant would have this Court believe, therefore, that had these informations been forthwith furnished it, there would have been no delay in securing the instrument.

Appellant's explanation has neither force nor merit. In the first place, the explanation reaches into an area of the proceedings into which We are not at liberty to encroach. The explanation refers to a question of fact. Nothing in the record suggests any arbitrary or abusive conduct on the part of the trial judge in the formulation of the ruling. His conclusion on the matter is sufficiently borne out by the evidence presented. We are denied, therefore, the prerogative to disturb that finding, consonant to the time-honored tradition of this Tribunal to hold trial judges better situated to make conclusions on questions of fact. For the record, We quote hereunder the lower court's ruling on the point:

> The defense that the delay, if any in opening the letter of credit was due to the failure of plaintiff to name the supplier, the amount and the bank is not tenable. Plaintiff stated in Court that these facts were known to defendant even before the contract was executed because these facts were necessarily revealed to the defendant before she could qualify as a bidder. She stated too that she had given the necessary data immediately after the execution of Exh. "A" (the contract of July 1, 1952) to Mr. GABRIEL BELMONTE, General Manager of the NARIC, both orally and in writing and that she also pressed for the opening of the

> letter of credit on these occasions. These statements have not been controverted and defendant NARIC, notwithstanding its previous intention to do so, failed to present Mr. Belmonte to testify or refute this. ...

Secondly, from the correspondence and communications which form part of the record of this case, it is clear that what singularly delayed the opening of the stipulated letter of credit and which, in turn, caused the cancellation of the allocation in Burma, was the inability of the appellant corporation to meet the condition importation by the Bank for granting the same. We do not think the appellant corporation can refute the fact that had it been able to put up the 50% marginal cash deposit demanded by the bank, then the letter of credit would have been approved, opened and released as early as August 4, 1952. The letter of the Philippine National Bank to the NARIC was plain and explicit that as of the said date, appellant's "application for a letter of credit ... *has been approved* by the Board of Directors with the condition that 50% marginal cash deposit be paid and that drafts are to be paid upon presentment." (Emphasis supplied)

The liability of the appellant, however, stems not alone from this failure or inability to satisfy the requirements of the bank. Its culpability arises from its willful and deliberate assumption of contractual obligations even as it was well aware of its financial incapacity to undertake the prestation. We base this judgment upon the letter which accompanied the application filed by the appellant with the bank, a part of which letter was quoted earlier in this decision. In the said accompanying correspondence, appellant admitted and owned that it did "not have sufficient deposit with your institution (the PNB) with which to cover the amount required to be deposited as a condition for the opening of letters of credit. ... .

A number of logical inferences may be drawn from the aforementioned admission. First, that the appellant knew the bank requirements for opening letters of credit; second, that appellant also knew it could not meet those requirement. When, therefore, despite this awareness that was financially incompetent to open a letter of credit immediately, appellant agreed in paragraph 8 of the contract to pay immediately "by means of an irrevocable, confirm and assignable letter of credit," it must be similarly held to have bound itself to answer for all and every consequences that would result from the representation. aptly observed by the trial court:

> ... Having called for bids for the importation of rice involving millions, $4,260,000.00 to be exact, it should have a certained its ability and capacity to comply with the inevitably requirements in cash to pay for such importation. Having announced the bid, it must be deemed to have impliedly assured suppliers of its capacity and facility to finance the importation within the required period, especially since it had imposed the supplier the 90-day period within which the shipment of the rice must be brought into the Philippines. Having entered in the contract, it should have taken steps immediately to arrange for the letter of credit for the large amount involved and inquired into the possibility of its issuance.

In relation to the aforequoted observation of the trial court, We would like to make reference also to Article 11 of the Civil Code which provides:

> Those who in the performance of their obligation are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable in damages.

Under this provision, not only debtors guilty of fraud, negligence or default in the performance of obligations a decreed liable; in general, every debtor who fails in performance of his obligations is bound to indemnify for the losses and damages caused thereby (De la Cruz Seminary of Manila, 18 Phil. 330; Municipality of Moncada v. Cajuigan, 21 Phil. 184; De la Cavada v. Diaz, 37 Phil. 982; Maluenda & Co. v. Enriquez, 46 Phil. 916; Pasumil v. Chong, 49 Phil. 1003; Pando v. Gimenez, 54 Phil. 459; Acme Films v. Theaters Supply, 63 Phil. 657). The phrase "any manner contravene the tenor" of the obligation includes any illicit act which impairs the strict and faithful fulfillment of the obligation or every kind or defective performance. (IV Tolentino, Civil Code of the Philippines, citing authorities, p. 103.)

The NARIC would also have this Court hold that the subsequent offer to substitute Thailand rice for the originally contracted Burmese rice amounted to a waiver by the appellee of whatever rights she might have derived from the breach of the contract. We disagree. Waivers are not presumed, but must be clearly and convincingly shown, either by express stipulation or acts admitting no other reasonable explanation. (Ramirez v. Court of Appeals, 52 O.G. 779.) In the case at bar, no such intent to waive has been established.

We have carefully examined and studied the oral and documentary evidence presented in this case and upon which the lower court based its award. Under the contract, the NARIC bound itself to buy 20,000 metric tons of Burmese rice at "$203.00 U.S. Dollars per metric ton, all net shipped weight, and all in U.S. currency, C.I.F. Manila ..." On the other hand, documentary and other evidence establish with equal certainty that the plaintiff-appellee was able to secure the contracted commodity at the cost price of $180.70 per metric ton from her supplier in Burma. Considering freights, insurance and charges incident to its shipment here and the forfeiture of the 5% deposit, the award granted by the lower court is fair and equitable. For a clearer view of the equity of the damages awarded, We reproduce below the testimony of the appellee, adequately supported by the evidence and record:

> Q. Will you please tell the court, how much is the damage you suffered?
>
> A. Because the selling price of my rice is $203.00 per metric ton, and the cost price of my rice is $180.00 We had to pay also $6.25 for shipping and about $164 for insurance. So adding the cost of the rice, the freight, the insurance, the total would be about $187.99 that would be $15.01 gross profit per metric ton, multiply by 20,000 equals $300,200, that is my supposed profit if I went through the contract.

The above testimony of the plaintiff was a general approximation of the actual figures involved in the transaction. A precise and more exact demonstration of the equity of the award herein is provided by Exhibit HH of the plaintiff and Exhibit 34 of the defendant, hereunder quoted so far as germane.

> It is equally of record now that as shown in her request dated July 29, 1959, and other communications subsequent thereto for the opening by your corporation of the required letter of credit, Mrs. Arrieta was supposed to pay her supplier in Burma at the rate of One Hundred Eighty Dollars and Seventy Cents ($180.70) in U.S. Currency, per ton plus Eight Dollars ($8.00) in the same currency per ton for shipping and other handling expenses, so that she is already assured of a net profit of Fourteen Dollars and Thirty Cents ($14.30), U.S., Currency, per ton or a total of Two Hundred and Eighty Six Thousand Dollars ($286,000.00), U.S. Currency, in the aforesaid transaction. ...

Lastly, herein appellant filed a counterclaim asserting that it has suffered, likewise by way of unrealized profit damages in the total sum of $406,000.00 from the failure of the projected contract to materialize. This counterclaim was supported by a cost study made and submitted by the appellant itself and wherein it was illustrated how indeed had the importation pushed thru, NARIC would have realized in profit the amount asserted in the counterclaim. And yet, the said amount of P406,000.00 was realizable by appellant despite a number of expenses which the appellee under the contract, did not have to incur. Thus, under the cost study submitted by the appellant, banking and unloading charges were to be shouldered by it, including an Import License Fee of 2% and superintendence fee of $0.25 per metric ton. If the NARIC stood to profit over P400 000.00 from the disputed transaction inspite of the extra expenditures from which the herein appellee was exempt, we are convicted of the fairness of the judgment presently under appeal.

In the premises, however, a minor modification must be effected in the dispositive portion of the decision appeal from insofar as it expresses the amount of damages in U.S. currency and not in Philippine Peso. Republic Act 529 specifically requires the discharge of obligations only "in any coin or currency which at the time of payment is legal tender for public and private debts." In view of that law, therefore, the award should be converted into and expressed in Philippine Peso.

This brings us to a consideration of what rate of exchange should apply in the conversion here decreed. Should it be at the time of the breach, at the time the obligation was incurred or at the rate of exchange prevailing on the promulgation of this decision.

In the case of *Engel v. Velasco & Co*., 47 Phil. 115, We ruled that in an action for recovery of damages for breach of contract, even if the obligation assumed by the defendant was to pay the plaintiff a sum of money expressed in American currency, the indemnity to be allowed should be expressed in Philippine currency at the rate of exchange at the time of the judgment rather than at the rate of exchange prevailing on the date of defendant's breach. This ruling, however, can neither be applied nor extended to the case at bar for the same was laid down when there was no law against stipulating foreign currencies in Philippine contracts. But now we have Republic Act No. 529 which expressly declares such stipulations as contrary to public policy, void and of no effect. And, as We already pronounced in the case of *Eastboard Navigation, Ltd. v. Juan Ysmael & Co., Inc*., G.R. No. L-9090, September 10, 1957, if there is any agreement to pay an obligation in a currency other than Philippine legal tender, the same is null and void as contrary to public policy (Republic Act 529), and the most that could be demanded is to pay said obligation in Philippine currency "to be measured in the prevailing rate of exchange at the time the obligation was incurred (Sec. 1, *idem*)."

UPON ALL THE FOREGOING, the decision appealed from is hereby affirmed, with the sole modification that the award should be converted into the Philippine peso at the rate of exchange prevailing at the time the obligation was incurred or on July 1, 1952 when the contract was executed. The appellee insurance company, in the light of this judgment, is relieved of any liability under this suit. No pronouncement as to costs.

Bengzon, C.J., Padilla, Concepcion, Paredes, Dizon and Makalintal, JJ., concur.
Barrera, J., took no part.
Reyes, J.B.L., J., reserves his vote.

The Lawphil Project - Arellano Law Foundation

BACK TOP